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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 47 of 1998

in

SPECIAL CIVIL APPLICATION No 1982 of 1986

with

CIVIL APPLICATION NO.243 OF 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed

to see the judgements? NO

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO.

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5. Whether it is to be circulated to the Civil Judge?

NO.

STATE OF GUJARAT

Versus

RASIKLAL V JHAVERI

Appearance:

MR DP JOSHI AGP for Appellants

MR ARUN H MEHTA for Respondent No. 1

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI

Date of decision:11/11/98

C.A.V.JUDGMENT

(Per Kadri, J.)

Admit. Service of notice of admission is waived by the learned advocate for the respondent. With the consent of the learned counsels appearing for the parties, the appeal is finally heard today.

2. The appellants who are the original respondents have filed this appeal under Clause 15 of the Letters Patent Act, challenging the judgment and order dated December 27, 1996, passed by the learned Single Judge, in Special Civil Application No.1982 of 1986.

3. The respondent who is the original petitioner filed Special Civil Application No.1982 of 1986 for issuance of an appropriate writ direction declaring that he is entitled to pension in view of the resolution dated August 2, 1985, (Annexure "D",), issued by the Education Department, Government of Gujarat. The respondent also prayed to direct the appellants to fix the pension of the petitioner and to pay the pension and other pensionary benefits and to continue to pay such pension to him treating him as a pensioner by virtue of the resolution, dated August 2, 1985.

4. According to the respondent, he started his career as a teacher in the year 1945. Subsequently he was promoted as a Principal, however, there were certain breaks in his service which came to be condoned and regularized and it is not in dispute in this petition that the said breaks were condoned and regularized by the Competent Authority. The Education Department had issued resolution dated December 21, 1971, which came to be further modified by the resolution dated August 2, 1985. It is the say of the respondent that by resolution of 1985, all the breaks in his service have to be disregarded for the purpose of ascertaining whether the respondent is entitled to payment of pension or not. It is contended that the appellants are illegally denying

the payment of pension to the respondent even though he is entitled to it by virtue of the resolution of 1985. It is stated that earlier the respondent had filed Special Civil Application No.4783 of 1982, which came to be dismissed as the respondent could not remain present at the time of hearing. It is contended that the respondent had made several demands by making representation to the appellants for fixation of pension, which came to be turned down, and therefore, he was constrained to file this petition for the reliefs stated hereinabove.

5. The appellants did not file affidavit in reply contesting the petition. The learned Single Judge concluded that the dispute involved in the petition with regard to the pensionary benefit to be granted to the petitioner was squarely covered by the decision of this Court rendered in Letters Patent Appeal No.20/82, which was decided on 26-11-82. The learned Single Judge after referring to the resolution of 1971 and the resolution of 1985 allowed the petition by holding that the petitioner on his retirement had completed the qualifying service, and therefore, he was entitled to pension and other retiral benefits. The learned Single Judge awarded interest on the arrears of pension at the rate of 18 % from the date of the petition i.e. from 1-4-1986. The learned Single Judge also awarded the compensatory cost of Rs.2,000/- which is challenged by the appellants by filing this appeal.

6. We have heard learned Addl. Government Pleader Mr. D.P.Joshi for the appellants and learned counsel Mr.A.H.Mehta for the respondent.

7. It is not in dispute that the respondent had retired in the year 1981. The respondent cannot claim benefit of the resolution of 1971 as there were breaks in his service and he had served during the breaks in a non-government school in Andhra Pradesh. The petitioner can only claim pension under the resolution of the Education Department which came to be issued on 2-8-85. The decision of this Court rendered in L.P.A. 20/82, on which reliance is placed by the learned counsel for the respondent will not be applicable to the facts of this case. Para : 7 of the resolution of 1971 is as under :

In counting the length of qualifying service for pension under this scheme, all previous service whether temporary, officiating or permanent either in one or more than one non-Government secondary school, shall be taken into account.

Subject to the general conditions that

the period of each break does not exceed 6 months and the total period of six breaks hereinafter referred to do not exceed two years, breaks in service on account of any of the reasons listed below not exceeding six in number, should not be treated as interruptions entailing forfeiture of past services :-

- (i) Break in service on account of resignation from a non-Government Secondary School, provided it is followed by their taking up service in another recognized non-Government Secondary School and is not intervened by their taking employment in any other capacity. Out of the maximum number of six breaks, not more than three breaks should be condoned on account of such resignation.
- (ii) Termination of services due to no fault of members of the staff or on account of the circumstances beyond the control of them. If the services of a member of staff have been terminated on disciplinary grounds, after following the prescribed procedure, such break in service cannot be condoned and the service rendered by them in the school from which their services are so terminated on disciplinary grounds will not count for pension.

8. Admittedly, the respondent had served outside i.e. in Andhra Pradesh for about six years in a non-government school, and therefore, he is not entitled to get the benefit of the resolution of 1971.

9. The teachers of Colleges and Universities represented before the Government that benefit of the resolution of 1971 should be extended for non-government secondary school employees also. The Education Department of the State Government considered the request of the Federation of non-government secondary teachers and decided that the scheme should be put on the same footing in case of non-Government teaching staff also. By the resolution of 1985, the services rendered by the teachers in non-government Institution came to be considered as a qualifying service for the purpose of pension and it will not be considered as a break in service. Therefore, the respondent only claimed pension by virtue of the resolution dated 2-8-85 and not by virtue of the resolution dated 21-12-71. Even the

respondent in his petition had also prayed that he should be paid pension as per resolution of 1985. Therefore, also the petitioner cannot claim pensionary benefit under the decision of the Division Bench of this Court rendered in L.P.A.20/82. The petitioner admittedly retired in the year 1981, and hence, he cannot claim pensionary benefit from the date of retirement, but he can only claim pension from the date of the resolution of 1985 i.e. August 2, 1985. The Apex Court in a decision rendered in the case of D.S. Nakara and others v Union of India, reported in A.I.R. 1983, S.C. 130 has ruled that:

" However, arrears of pension prior to the specified date are not required to be paid to those who have retired before the specified date because to that extent the scheme is prospective. Accordingly, all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalized pension scheme for the specified date, irrespective of their date of retirement.

10. The pensionary benefit came to be extended in the case of the respondent from the date of the resolution of 1985. The Education Department by another resolution dated August 2, 1985, bearing No.SSN-1184-278 (87)-CHH, Sachivalaya, Gandhinagar, specifically made it clear that no arrears should be paid for the period prior to 2-8-85 i.e. the employees shall be paid revised pension from 2-8-85 onwards only. Therefore, respondent shall be entitled to claim pensionary benefit under the resolution of 1985 and from 2-8-1985 and not from the date of retirement i.e. from 1981. In our opinion, the principles laid down in case of D.S.Nakara and others vs. Union of India (Supra) will apply with all fours to the facts of the present case. Therefore, in our view the respondent cannot claim pensionary benefit prior to August 2, 1985. Learned A.G.P. Mr. Joshi has made the statement at the bar that the appellant has already paid the arrears of pension to the respondent pursuant to the contempt proceeding initiated against the appellant. It is also submitted that the respondent has been paid pension from the year 1989.

11. As a result of the foregoing discussion, we allow this appeal to the extent that the petitioner is entitled to pension and other retiral benefits from August 2, 1985 and not prior to that date. The judgment and order of learned Single Judge is set aside to that extent. It must be made clear that even though the petitioner was paid pension from the year 1989 as per the resolution of

1985, the said fact was conceded by the respondent before the learned Single Judge. Therefore, the order of learned Single Judge directing to pay interest at the rate of 18 % on the amount of arrears of pension also deserves to be modified to the extent that the respondent shall be entitled interest at the rate of 18 % on the arrears of pension found due from the date of the petition till March 1989 when his pension came to be sanctioned by the Competent Authority and as a result of which the respondent was paid the arrears of pension in the year 1989. The order of awarding cost of Rs.2,000/is a discretionary, and therefore, we do not think it fit to interfere with the said order. This appeal is therefore, allowed to the aforesaid extent with no order as to cost.

12. Civil Application for stay will not survive and hence it stands disposed of accordingly.

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